IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 25.05.2006

Criminal Appeal No. 163 of 2005
(Old No. 1188 of 1986)

1. Kishan Ram
2. Deb Ram
3. Tara Ram

all sons of Sri Hari Ram
R/o Village Kotuli (Ishwaridhar)
Patwari Khestra Kotuli
District- Almora ……..Appellants

Versus

State of U.P. ……Respondent

Mr. Nand Prasad, Advocate for the appellants.
Mr. D.K. Sharma, Government Advocate for the State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Initials of Judges

Date: 25.05.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 31.03.1986, passed in Sessions Trial No. 31 of 1985, by the then learned Sessions Judge, Almora, whereby appellants Kishan Ram, Deb Ram and Tara Ram, were convicted under Section 302 read with Section 34 of Indian Penal Code, 1860 (herein after for brevity referred as I.P.C.) and each one of them was sentenced to imprisonment for life. Appellant Kishan Ram was further convicted and sentenced to undergo one-year rigorous imprisonment under Section 452 of I.P.C. and

three years rigorous imprisonment under Section 394 of the said Code.

2. According to the prosecution story, deceased Sher Ram was resident of village Kotuli, P.W.1 Smt. Saruli Devi is his widow and P.W. 2 Nandi Devi is his daughter. Smt. Saruli Devi is handicapped and lame who cannot walk but only crawl. Accused/appellants Kishan Ram, Deb Ram and Tara Ram are also residents of the same village i.e. Kotuli. Sher Ram (deceased) had strained family relations with the accused/appellants. It is alleged by the prosecution that about a year before the day of the incident, Deb Ram raped Smt. Saruli Devi, as a result of which she became pregnant. When Sher Ram came to know of the fact, he got the child aborted. However, thereafter, the relationship between Sher Ram and the accused/appellants turned sour. A day before the day of the incident, cattle of the accused/appellants damaged the standing crop of Sher Ram (deceased) who hurled abuses at them. The next day i.e. on 30th September, 1985, in the morning (around 07:00 A.M.), when Sher Ram was getting ready to go to Jageshwar (a near by place from his village), all the three accused/appellants reached at his house and got hold of Sher Ram. While accused Deb Ram and Tara Ram dragged Sher Ram, accused/appellant Kishan Ram entered in his house and broke open the lock of box, kept inside. On this, P.W. 1 Saruli Devi, started shouting but she was beaten by Kishan Ram with fists and kicks. Appellant Kishan Ram then took away money from the box and accompanied the other two accused/appellants in taking Sher Ram towards backside of his house. All the three killed Sher Ram and

hanged him at a distance from a tree. P.W. 1 Smt. Saruli Devi crawled and reached near the tree. As soon as she touched the feet of Sher Ram (deceased), he fell down on the ground. It is alleged that P.W. 2 Nandi Devi, also saw accused/appellants beating and taking away Sher Ram. On being asked by Saruli Devi, her daughter Nandi Devi soon after the incident went to inform her uncle, P.W. 4 Pani Ram. On getting information, at Jageshwar, P.W. 4 Pani Ram, rushed to the place of occurrence and went to Patwari to lodge First Information Report (Ext. A-2). (In Uttaranchal hills certain Revenue Officers are given police powers). Patwari P.W. 7 Madan Singh on the basis of said report, prepared Check Report (Ext. A-4) and went to the seen of occurrence. He got prepared Inquest Report (Ext. A-7) of the dead body and also prepared other connected papers- Memo of Recovery of dead body (Ext. A-5), Sketch of dead body (Ext. A-8), Sample Seal (Ext. A-10), Letter to the Chief Medical Officer, Almora (Ext. A-11) requesting for post mortem examination. Patwari also took into his possession one muffler (Ext. 2) belonging to the deceased and one rope (Ext. 1), found at the spot by which neck of the deceased was said to have been roped. He prepared Recovery Memo of the same. After recording statements of the witnesses, he also prepared the Site Plan (Ext. A - 12). He submitted charge sheet (Ext. A-13) against all the three accused/appellants on 24.11.1985. The Magistrate, who received charge sheet, registered the same and after giving necessary copies to the accused persons under Section 207 of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.), committed the case to the Court of Sessions for trial. Learned Sessions Judge after hearing the prosecution

and counsel for the defence, framed charge of offence punishable under Section 302 read with Section 34 of I.P.C. against all the three accused persons. Learned Sessions Judge, further framed charge of offence punishable under Section 452 I.P.C. and the one punishable under Section 394 of the said Code against the accused/appellant Kishan Ram. All the accused persons denied all the charges and claimed to be tried. Then prosecution got examined before the trial court, P.W. 1 Smt. Saruli Devi- widow of the deceased, P.W. 2 Nandi Devi- daughter of the deceased, P.W. 3 Dr. Jamal Masood, who medically examined the injuries of P.W. 1 Saruli Devi, P.W. 4 Pani Ram- informant, P.W. 5 Narayan Datt- Sabhapati, P.W. 6 Dr. M.L. Agarwal, who conducted the post mortem examination of the dead body of Sher Ram and P.W. 7 Madan Singh (Patwari – Investigating Officer). An affidavit of P.W. 8 Constable Rajendar Singh Gaur was also filed before the trial court regarding the fact that the case property, kept in Malkhana was kept so in sealed condition. The oral and documentary evidence adduced by the prosecution was put to the accused/appellants under Section 313 of Cr.P.C., who alleged in their reply that the evidence adduced against them is false. Learned Sessions Judge, after hearing the arguments of both the sides, convicted all the three accused/appellants under Section 302 read with Section 34 of I.P.C. and sentenced to each of them to imprisonment for life. He further convicted the accused Kishan Ram under Section 452 I.P.C. and also under Section 394 of the Code and sentenced to rigorous imprisonment of one year and three years respectively under said section. Aggrieved by which this appeal has been preferred by the appellants.

3. We heard learned counsel for the parties and perused the record.

4. Before further discussion, it is pertinent to mention here that on post mortem examination of dead body of Sher Ram, P.W. 6 Dr. M.L. Agarwal, found following ante mortem injuries on 01.10.1985 (i.e. next day of the incident):-

1. Ligature mark present round the neck. The ligature mark is transverse, contusions present in the lower part of neck below the thyroid cartilage encircling the neck. Abrasions present below the mark. Knot present over right side of neck close to the angle of lower jaw. The base of the mark is soft and reddish. Hyoid bone found fractured. Fracture of larynx and trachea present. Subcutaneous tissue under the mark found ecchymosed.

In the opinion of Doctor Agarwal, death was caused due to asphyxia as a result of strangulation. He prepared the post mortem examination (Ext. A-3), after conducting the autopsy.

5. It is also pertinent to mention here the injuries on the person of P.W. 1 Smt. Saruli Devi. P.W. 3 Dr. Jamal Masood, medically examined P.W. 1 Smt Saruli Devi and

found following injuries on the person of said witness, on the next day of the incident i.e. on 01.10.1985:-

1. **Abrasion 2cm X 0.1cm on the right side of neck, 6cms above the mid-point of right clavicle (collar bone).**
2. **Abrasion 2.5 cm X 0.1cm on left side of neck, 7 cms above the mid point of left clavicle.**
3. **Abrasion 2cm X 0.1 cm on left side of neck, 5.5 cm above the mid point of left clavicle.**
4. **Abrasion 3.5 cm X 0.1cm on dorsal aspect of right hand, 3.5 cm above the metacarpo-phalangeal joint of right middle finger.**
5. **Contusion 1cm X 0.5cm on lateral aspect of right leg, 18 cms below the right knee joint.**
6. **Contusion 0.5cm X 0.5cm on lateral aspect of right leg, 22cm below the right knee joint.**
7. **Contusion 1cm X 0.5cm on medial aspect of right leg, 19 cms below the right knee joint.**

6. P.W. 1 Saruli Devi has stated in her examination that in the morning, on the day of the incident when her husband was washing his face on the stair case of his house, accused/appellants Kishan Ram, Deb Ram and Tara Ram came there and started beating him. She further states that

accused Deb Ram and Tara Ram dragged Sher Ram from the house while Kishan Ram looted money from a box inside the house. She further states that she was also beaten by accused Kishan Ram. She further states that all the three accused took Sher Ram, beating him, behind his house and after sometime he was hanged by the accused persons on a tree. Then she crawled up to the place where the body of the deceased was hanging. As soon as she touched the body, it fell down on the ground. P.W. 2 Nandi Devi also corroborates this fact that accused persons surrounded her father Sher Ram (deceased).

8. There is no independent eye-witness of the incident though the incident is said to have taken place out side the house and in the day time (morning time). The incident has not taken in a lonely place or in a jungle but in the village, which means there must have been several houses in the village. It has come in the evidence of aforesaid two witnesses that one Hari Ram, their relative (distant Taau) also lives nearby their house. However, there is no explanation from the prosecution why other witnesses could not see the occurrence when three persons were beating Sher Ram and his wife (P.W.1 Saruli Devi) says that she was also shouting.

9. According to P.W. 1 Saruli Devi, after killing Sher Ram (deceased), his body was taken from 'KARADI' (a narrow space in between retaining wall on hill side and the back side wall of the house) to a field and was hanged from a tree. In our opinion, it is most unnatural on the part of the persons who killed a person in a secret place like

‘KARADI’ and then went to show it in daylight that they are hanging the same from a tree in an open place. This kind of the conduct would have certainly exposed the accused and they could have been seen doing so by other villagers. Not only this, Site Plan (Ext. A-12), shows that near the place of the incident, there is pathway for going from Panuwanaula to Bageshwar, which means other persons too could have seen the culprits doing the said act. As such, the prosecution story, as brought before the court that accused persons after killing Sher Ram hanged him from a tree, does not appear to be a natural one.

10. Apart from the above weaknesses, the allegations that Kishan Ram, committed robbery in the house of P.W. 1 Saruli Devi, also appears to be highly doubtful. Saruli Devi could neither disclose what was the amount kept in the box nor could she tell what was the value of the property looted from it.

11. The most significant point which further creates reasonable doubt on the prosecution story, as narrated is that the deceased is alleged to have been dragged by three persons and was beaten while taking him to ‘KARADI’ of his house. But the Post Mortem Report (Ext. A-3) does not disclose any ante mortem injury except the ligature mark with abrasions over the neck, as mentioned above. It is strange that a person who was dragged and beaten by three persons could not get even a single injury, corroborating that he was given beating, dragged or had a scuffle with the accused persons. The cause of death is said to be asphyxia as a result of strangulation.

12. In the circumstances of the case, probability cannot be ruled out that the deceased might have committed suicide due to his family conditions. From the evidence of P.W. 1 Saruli Devi and P.W. 2 Nandi Devi, it is clear that Nandi Devi, used to stay out of home during nights and her father used to get annoyed with her. The defence has suggested to P.W. 1 Saruli Devi that her husband was fed-up of mother and daughter and it is also suggested that there had been quarrel between the husband and wife in night preceding the incident. Though she has denied the said fact but admitted that she was second wife of her husband.

13. From the above discussion of evidence, we are of the view that it cannot be said that the prosecution has been successful in proving the charge of murder (with common intention) framed against the accused persons beyond reasonable doubt. The story of robbery as alleged is highly unnatural as the same is without any details. There is no injury on the person of the deceased except the ligature mark with abrasions on the neck but he is said to have been dragged and given beating by three persons. There is no independent eye-witness though the incident has taken place infront of the house in a village where other villagers should have witnessed the incident, as generally in the morning people are in their houses. All these factors make the prosecution story shaky and doubtful. As far as injuries on the person of P.W. 1 Saruli Devi are concerned these abrasions and contusions could have been caused when she rolled with dead body of deceased near tree from one field

to another. She has stated in her examination that she got rolled with the dead body after it fell from the tree.

14. In the circumstances we are of the view that the accused should not have been convicted of the charges as the same are not proved beyond reasonable doubt. Accordingly, giving the benefit of doubt, accused/appellants are entitled to acquittal from the charges framed against them. Therefore, the appeal is allowed. Impugned judgment and order-dated 31.03.1986, passed in Sessions Trial No. 31 of 1985, by the then learned Sessions Judge, Almora, is set aside. Order convicting accused persons and sentencing them, as mentioned in the impugned judgment, is set aside. The appellants are acquitted of the charges framed against them. They are on bail. They need not surrender.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 25.05.2006
Sweta